

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1268 of 2000

to

FIRST APPEAL No 1285 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? :

SPECIAL LAND ACQUISITION OFFICER

Versus

NANUBHAI VISABHAI

Appearance:

MR RC KODEKAR, AGP for the appellants
MR NITIN AMIN for respondents in First
Appeals No.1268/2000 & 1274/2000.
MR AJ PATEL for respondents in rest of
the First Appeals.

CORAM : MR.JUSTICE J.M.PANCHAL

and

Date of decision: 17/08/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. Nitin M. Amin, learned counsel waives service of notice on behalf of the claimants-respondents in First Appeals No.1268/2000 and 1274/2000. Mr. A.J.Patel, learned counsel waives service of notice on behalf of the claimants-respondents in rest of the appeals.

At the joint request of the learned advocates appearing for the parties, the appeals are taken-up for final hearing today.

2. All these appeals which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated October 26, 1999 rendered by the learned 2nd Extra Assistant Judge & Special Judge (LAR) Narmada Yojana, Ahmedabad (Rural) at Mirzapur, in Land Acquisition Cases No. 2236/96 to 2253/96 and as common questions of fact and law are involved in the appeals, we propose to dispose them of by this common judgment.

3. The Executive Engineer, Narmada Project, Mehsana had proposed to the State Government to acquire agricultural lands of village Bhojava, Taluka : Viramgam, District : Ahmedabad for the purpose of construction of Narmada Project, Goraiya Branch. On scrutiny of proposal, the State Government was satisfied that agricultural lands of village Bhojava were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued, which was published in Government Gazette on April 26, 1993. The land owners were served with notices under section 4 of the Act and they had filed objections against the proposed acquisition. After taking into consideration their objections, the Special Land Acquisition Officer, Narmada Project had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands which were specified in the notification issued under section 4(1) of the Act, were needed for the public purpose of construction of Narmada Project, Goraiya Branch.

Therefore, declaration under section 6 of the Act was made, which was also published in the Government Gazette on September 29, 1993. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 30/- per sq.mt. Having regard to the materials placed before him, Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 1.50 Ps. per sq.mt. by award dated February 12, 1996. The claimants were dissatisfied with the offer made by the Land Acquisition Officer and did not accept the award. They filed applications under section 18 of the Act and required the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur, which were numbered as Land Acquisition Cases No. 2236/96 to 2253/96.

4. In the reference applications, it was pleaded by the claimants that having regard to the market value of the adjacent lands and fertility of the lands acquired, they were entitled to compensation at the rate of Rs. 30/- per sq.mt. The reference applications were contested by the Special Land Acquisition Officer, Narmada Project Unit-3, Ahmedabad vide Exh.10; whereas the Executive Engineer, Narmada Project, Division No.18, Mehsana had contested the reference applications by filing writte statement at Exh. 20/1. In the replies filed by the appellants, it was averred that the compensation determined by the Land Acquisition Officer was just and proper in view of fertility of the lands, crops raised tehreon as well as income therefrom and, therefore, the reference applications should be dismissed. In view of the rival assertions made by the parties, necessary issues for determination were framed by the reference court. On behalf of the claimants, one Parbatsinh Laxmansinh Jhala was examined at Exh.19. It may be stated that he was one of the claimants and his land was also acquired by declaration made under section 6 of the Act. He deposed that his land along with the lands of other claimants were acquired and compensation offered by the Land Acquisition Officer was inadequate. He asserted before the court that facilities, such as, water, light, school, telephone, co.operative societies etc. were available in the village and the acquired lands were even and had irrigation facility. According to this witness, because of high fertility of the lands acquired, the claimants were able to take crops of millet, cumin seeds, juvar, cotton, vegetables, sheaves

etc. and were getting Rs.30,000/- to 35,000/- per Bigha as net agricultural income. The witness claimed in his deposition that earlier lands of this very village were acquired for the public purpose of railway diversion road as well as for Okha - Porbandar line, for which the District Court had determined market value at the rate of Rs. 8/- per sq.mt. He produced copies of judgments of the District Court at Exhs.15 & 17. In his cross-examination, the witness denied the suggestion made on behalf of the appellants that the compensation determined by the Land Acquisition Officer was just and proper.

On behalf of the present appellants, Mr. Dahyabhai Naranbhai Patel was examined at Exh.47. He deposed that village Bhojava is at a distance of 5 Kms. from Taluka Place and has population of about 5000 to 6000 people and as there are no big industries or residential societies, the demand made by the claimants for higher compensation was not justified.

On consideration of the evidence led by the parties, the reference court held that the previous awards relating to lands of this very village were comparable and relevant for the purpose of ascertaining market value of the lands acquired in the present case. After perusal of earlier awards produced at Exhs.15 and 17, the reference court deduced that notifications under section 4(1) of the Act were published in the Government Gazette on July 12, 1984 and September 2, 1982 respectively before acquiring the lands which were subject matter of earlier judgments; whereas in the present case, notification under section 4(1) of the Act was published on April 26, 1993 and, therefore, because of passage of time and rise in price of land, the claimants were entitled to increase in price of the lands at the rate of 10% per annum. In the ultimate decision, the reference court has held that the claimants are entitled to additional compensation at the rate of Rs. 18/- per sq.mt. by common award dated October 26, 1999, which has given rise to the present appeals.

5. Mr. R.C.Kodekar, learned A.G.P. submitted that previous awards rendered in respect of agricultural lands of this very village were not relevant at all for the purpose of ascertaining market value of the lands acquired in the present case and, therefore, the impugned award should be set aside. According to the learned counsel, no cogent evidence was led by the claimants indicating rise in price of the land and, therefore, it was pleaded that reference court was not justified in

granting rise in price of the lands to the claimants. The learned counsel for the appellants contended that the compensation determined by the reference court is on higher side and, therefore, the appeals should be accepted.

6. Mr. A.J.Patel and Mr. Nitin M.Amin, learned counsel for the claimants submitted that having regard to fertility of the lands acquired as well as income which was being derived by the claimants, the claimants ought to have been awarded compensation at the rate of Rs. 30/per sq.mt. but, in any view of the matter, the determination of compensation at the rate of Rs.18/- per sq.mt. cannot be regarded as unwarranted one. What was claimed was that previous awards produced at Exhs.15 & 17 were relevant for the purpose of ascertaining market value of lands of this very village and, therefore, no error was committed by the reference court in placing reliance on the previous awards for the purpose of determining market value of the lands acquired in the present case. Learned counsel for the claimants emphasised that notifications under section 4(1) of the Act were published on July 12, 1984 and September 2, 1982 while acquiring lands of this very village i.e. subject matters of Exhs.15 and 17; whereas in the present case, notification under section 4(1) of the Act was published on April 26, 1993 and as there was time lag between issuance of notifications under section 4 of the Act, reference court was justified in giving rise in price of the land, which should be upheld by this Court. According to the learned counsel, determination of compensation is just as well as proper and, therefore, the appeals should be dismissed.

7. We have taken into consideration the relevant evidence produced by the learned counsel for the parties and perused the record and proceedings of the case received by this Court pursuant to order dated August 7, 2000. It is well settled that previous award of the reference court or High Court in respect of the similar or adjacent lands of the same village and which has become final between the parties, can be taken into consideration for the purpose of ascertaining market value of the lands acquired subsequently. Exh.15 is the judgment rendered by the learned 2nd Jt. District Judge, Ahmedabad (Rural) at Mirzapur, in Land Acquisition Cases No.595/87 to 601/87. It indicates that agricultural lands of village Bhojava were acquired for the construction of diversion road of Ahmedabad- Bhuj and notification under section 4(1) of the Act was published in the Government Gazette on July 12, 1984. The Land

Acquisition Officer had offered compensation to the claimants at the rate of Rs. 70/- per Are i.e. Rs. 0.70 Ps. per sq.mt. by his award dated September 1, 1986, but the reference court held that the claimants were entitled to additional compensation at the rate of Rs.7.30 Ps. per sq.mt. Again, Exh.17 which is award dated October 29, 1988 rendered by the learned 2nd Jt. District Judge, Ahmedabad (Rural) in Land Acquisition Cases No.314/86 to 319/86 shows that agricultural lands of village Bhojava were acquired for the public purpose of converting meter-gauge railway line of Viramgam-OkhaPorbandar into broad-gauge. Thereafter notification under section 4(1) of the Act was published in Government Gazette on September 2, 1982. The Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.40/- per Are i.e. Rs.0.40 Ps. per sq.mt. by his award dated May 18, 1984. At the instance of the claimants, references were made to the District Court and the District Court by award dated October 29, 1988 held that the claimants were entitled to additional compensation at the rate of Rs. 7.60 Ps. per sq.mt.

Witness Parbatsinh Laxmansinh Jhala whose evidence is recorded at Exh.19 has clearly stated that the lands which were acquired earlier were similar to the lands acquired in the present case. His assertion that fertility of the lands acquired earlier is comparable with the fertility of lands acquired in the present case and that the claimants were taking crops of millet, cumin seeds, juvar, cotton, vegetables, sheaves etc., is not effectively challenged by the present appellants. The judgments produced at Exhs.15 & 17 relating to the lands acquired of the same village, are relevant for the purpose of ascertaining market value of the lands acquired in the present case. Under the circumstances, we are of the opinion that no error was committed by the reference court in placing reliance on Exhs.15 & 17 for the purpose of determining market value of the lands acquired in the present case. It is relevant to notice that lands which were subject matter of Exh.15, were acquired pursuant to section 4(1) notification which was published on July 12, 1984; whereas lands which were subject matter of Exh.17, were acquired pursuant to publication of notification under section 4 of the Act on September 2, 1982. In the present case, notification under section 4 of the Act was published in the Government Gazette on April 26, 1993. It is common knowledge that price of land increases with the passage of time. Under the circumstances, we are of the considered view that no error was committed by the

reference court in holding that the claimants were entitled to increase in compensation at the rate of 10% per annum because of time lag between the notifications issued under section 4(1) of the Act. The ultimate decision of the reference court that the claimants are entitled to get Rs.18/- per sq.mt. as additional compensation is just and no ground is made out by the appellants to interfere with the same in the present appeals. We may state that the learned counsel for the claimants have stated at the Bar that judgments rendered by the reference court, which are produced at Exhs.15 & 17, relating to the lands acquired earlier have become final, as the appeals filed against those awards have been dismissed by the High Court. Thus, Exhs. 15 & 17 having become final are rightly relied on by the reference court for the purpose of ascertaining market value of the lands acquired in the present case. The result is that, we do not find any merit in the appeals and the appeals deserve to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)